

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
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**Report**

TO: Members of the Judicial Council

FROM: Christine M. Hansen, Director, Finance Division, 415-865-7951  
Stephen H. Nash, Assistant Director, Finance Division

DATE: August 27, 2004

SUBJECT: Report to the Department of Finance on Service of Process  
Fees Billed to the Trial Courts under Chapter 1009,  
Statutes of 2002 (Action Required)

Issue Statement

The Budget Act of 2003 (Ch. 1009, Stats 2002) requires that the Judicial Council provide a report to the state Department of Finance (DOF), by September 1, 2004, detailing the number of services of process billed to the courts under the act, the costs of these services, and information on any agreements reached with local law enforcement to provide this service free of charge or at a reduced rate. The documents being served by law enforcement under this item are specific types of orders and/or injunctions in civil (C.C.P. § 527.6) and domestic violence (Fam. Code § 6222) cases.

Recommendation

Staff recommends that the Judicial Council approve the attached report for submission to the DOF.

Rationale for the Recommendation

The attached report addresses each of the requirements for the report based on information received from the courts. While the amount reimbursed to the courts to date for fiscal year (FY) 2003–2004 is well below the \$3 million appropriated for this purpose, explanations as to why the amount is lower than expected are included, along with implementation issues regarding the process, which will be considered by staff, the courts, and the sheriff in the future.

Alternative Actions Considered

No alternative actions were considered. The Budget Act of 2003 requires that this report be submitted.

Comments from Interested Parties

None.

Implementation Requirements and Costs

Once approved, the report will be submitted to the DOF. There are no costs associated with this report.

Report to the Department of Finance on Service of Process  
(Stats. of 2002, Ch. 1009)

September 1, 2004  
Judicial Council of California

## Report on Service of Process

### Background

Assembly Bill 2030 (Stats. 2002, ch. 1009) provides that upon the application of a petitioner, there is no charge to the petitioner for the service of process of a protective order, restraining order, or injunction, if the order or injunction is based on specified acts or threats. This includes an order sought by a person who has suffered harassment as identified in Code of Civil Procedure section 527.6 (based upon fear of sexual assault or stalking), or one who has suffered domestic violence per Family Code section 6222.

While service of process of these orders or injunctions is free of charge to the petitioner, the statute allows that the sheriff, marshal, or constable may bill the superior court for payment of fees in cases in which the petitioner does not qualify for a waiver of fees, consistent with rules prescribed by the Judicial Council. The fees for service, cancellation of service, and making a not found return (attempted service) may not exceed the amounts provided in Government Code sections 26721, 26736, and 26738 (\$30, \$28, and \$30, respectively).

The statute requires the Judicial Council to promulgate forms and instructions, and rules for service of process, scheduling of hearings, and any other matters required by Code of Civil Procedure section 527.6 and Family Code section 6222. The council adopted for mandatory use beginning on January 1, 2004, a new form, the Request and Order for Free Service of Restraining Order (Domestic Violence or Harassment (sexual assault or stalking)) (CH-101/DV-290). The form is to be used along with the form Application of Waiver of Court Fees and Costs (form 982(a)(17)). Form CH-101/DV-290 contains a section within which a judicial officer or clerk must indicate whether the petitioner qualifies for a fee waiver (thereby resulting in no fee to be charged by law enforcement to any party or entity for service). If the person does not qualify for a fee waiver, law enforcement may bill the court for the costs of service up to the limits indicated previously.

The Administrative Office of the Courts (AOC) sought funding on behalf of the trial courts during the FY 2003–2004 budget cycle to offset the costs to the courts of the provisions of this statute. The Budget Act of 2003 (Stats. 2003, ch. 157) included an augmentation of \$3.0 million to be used for this purpose, with any unused portion of the funding to be reverted to the General Fund. The Act also mandated that the Judicial Council provide the Department of Finance with a report, by September 1, 2004, detailing (1) the number of services of process billed to the courts under the revised statute, (2) the costs of the services, and (3) information on any agreements reached with local law enforcement to provide the service free of charge or at a reduced rate.

### Cost of Orders/Injunctions Served in FY 2003–2004

The courts have been asked on a quarterly basis to provide AOC staff with the number of qualifying orders served and the cost to the court for service of these orders. The courts have been subsequently reimbursed for these charges. As of August 4, 2004, the courts have been charged and paid \$748,862 for the cost of 25,001 qualifying orders or

injunctions that met the requirements of AB 2030. Due to the billing practices of the sheriffs, some courts have not been billed yet for all FY 2003–2004 qualifying orders and injunctions. Staff believes that additional funding will be reimbursed to the courts for service of process for qualifying orders/injunctions that occurred in FY 2003–2004. There may also be some minor adjustments to amounts previously paid as courts and sheriffs reach decisions on the types of orders/injunctions for which the courts can legitimately be billed and reimbursed through this process.

To date there are no agreements for provision of service at a rate lower than the statutory maximum of \$30. One court has indicated that they are routinely being charged \$28 where the sheriff has unsuccessfully attempted service. One court stated that they have an arrangement with law enforcement, other than the sheriff, to provide free service when the person to be served is outside of the sheriff's jurisdiction. Another court said that an agreement made prior to the implementation of AB 2030 to provide service for free is still in effect with local law enforcement. The majority of courts have not been charged by law enforcement. This may be because no qualifying orders or injunctions have been submitted to them for service. These arrangements may change in the future to the extent that the number of qualifying orders or injunctions changes.

AB 2030 became effective on January 1, 2003. Funding to reimburse the courts for service of qualifying orders/injunctions, however, was not received until after the Budget Act of 2003 was enacted. Three sheriff departments have billed courts for the cost of orders/injunctions that were served between January 1 and June 30, 2003, prior to the effective date of the measure. Because the funding was not received until after the beginning of FY 2003–2004, only charges for those orders served on or after July 1, 2003 have been reimbursed to the courts. Courts have had to either absorb the costs for the earlier services or reach an agreement with the sheriff that they will not be required to pay.

While the amount charged to the courts to date is relatively small, the amount is expected to increase over the next year as sheriffs and courts become more familiar with the provisions of the law, and develop procedures for service and billing of these costs. There has been a definite learning curve in this process. Three courts have indicated that their sheriffs plan to begin billing for service in FY 2004–2005.